

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT AND
CONDITIONAL USE PERMIT DENIED
BY GRAYS HARBOR COUNTY TO
EVERGREEN ROCK PRODUCTS,

EVERGREEN ROCK PRODUCTS,

Appellant,

v.

GRAYS HARBOR COUNTY AND
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Respondents.

SHB 85-29

SUMMARY JUDGMENT ORDER

I

PROCEDURE

1. Appellant filed its Request for Review in this matter on
September 13, 1985..

2. On September 26, 1985 the Request for Review was certified by
the Department of Ecology.

1 3. On October 16, 1985, a pre-hearing conference was held where
2 the parties agreed to submit the case to the Board on Motion for
3 Summary Judgment limited to the sole question of whether the vote of
4 the Grays Harbor Shoreline Hearings Board concerning Shoreline
5 Management application (SMA) Number 85-20 on August 13, 1985, had the
6 effect of denying the permit application.

7 II

8 MATERIALS CONSIDERED

9 The following were considered by the Board upon this Motion for
10 Summary Judgment:

11 1. Rules of Procedure of the Grays Harbor County Shorelines
12 Hearing Board adopted August 9, 1983.

13 2. Appellant's Brief for Summary Judgment filed with the Board
14 December 4, 1985.

15 3. Respondent's Brief for Summary Judgment filed with the Board
16 December 4, 1985.

17 4. The Grays Harbor County Shoreline Master Program (WAC
18 173-19-350) of which official notice is taken pursuant to WAC
19 461-08-185(2).

20 III

21 UNDISPUTED FACTS

22 1. There are no genuine issues of material fact.

23 2. On this motion the following are undisputed:

24 That on August 13, 1985 the Grays Harbor County Shorelines Hearing
25 Board held a hearing to consider two permit applications which had

1 been filed by the Appellant, Evergreen Rock Products. The two
2 applications were numbered SMA 85-21 for Upland Mining and SMA 85-20
3 for Gravel Bar Scalping. The permits covered two adjacent pieces of
4 property, both owned by the Appellant. The Grays Harbor County
5 Shorelines Hearing Board is composed of seven members. At the hearing
6 held August 13, 1985, six members of the board were present. After
7 the hearing, the Board voted on application SMA 85-21 for Upland
8 Mining, six to zero in favor, the Board then considered application
9 SMA 85-20, the board voted on that application as follows: three in
10 favor, none against, three abstentions.

11 The Board ruled that because a majority of the entire board had
12 not voted in favor of the application, the application was denied.

13 IV

14 ISSUE PRESENTED

15 Whether the vote of the Grays Harbor County Shorelines Hearing
16 Board on permit application SMA 85-20 with three votes for, none
17 against, and three abstentions had the effect of denying the permit
18 application?

19 V

20 CONCLUSIONS OF LAW

21 1. The Rules of Procedure of the Grays Harbor Shoreline Master
22 Program, Section VI entitled "Quorum & Decisions" in pertinent part
23 reads as follows;

24 All action of the Board shall be by motion which
25 shall include the reasons for each decision. The
concurring vote of a majority of the members of the

1 Board shall be necessary to decide in favor of an
2 applicant on any matter upon which it is required
to render a decision.

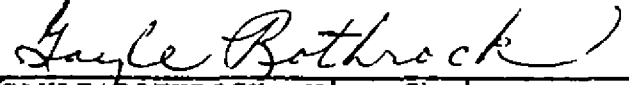
3 We conclude that the action of the Grays Harbor County Shorelines
4 Hearing Board on permit application SMA 85-20 had the effect of
5 denying the application. We do so on the basis of the plain meaning
6 of that Board's rules. We construe these rules to require at least
7 four affirmative votes of the seven-member Board for the approval of a
8 permit. In so doing, we have given weight to the Board's
9 interpretation of its own rules and have been influenced by the
10 analogy provided by Department of Ecology v. Kirkland, 84 Wn.2d 25,
11 523 P.2d 1181 (1974), where the affirmative vote of less than a
12 majority of the State Shorelines Hearings Board was held, in effect,
13 to confirm the status quo. We believe that our ruling sustains what
14 was intended by the drafters of the Grays Harbor Shoreline Master
15 Program.

1 NOW THEREFORE, IT IS ORDERED that Respondent's Motion for Summary
2 Judgment affirming the Denial of the subject permit is granted as a
3 matter of law. This is a final Order which fully adjudicates the
4 instant case.

5 DONE at Lacey, Washington, this 26th day of December, 1985.

6 SHORELINES HEARINGS BOARD

7  12/17/85
8 LAWRENCE J. FAULK, Chairman

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11 GAYLE ROTHROCK, Vice Chairman

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13 
14 WICK DUFFORD, Lawyer Member

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16 NANCY R. BURNETT, Member

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18 LES ELDRIDGE, Member
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MATERIALS CONSIDERED

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SHB No. 85-29

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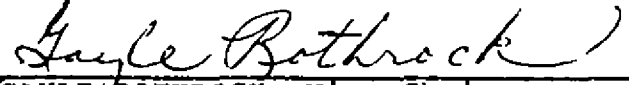
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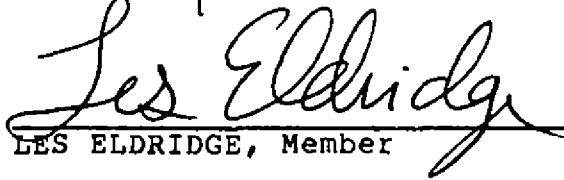
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